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have decided the other way. The same view of the question has been taken in Iowa, Louisiana, and Illinois (67 Iowa, 702; 22 La. An. 545; 103 U. S. 423), though the cases are not exactly in point. In California (2 Cal. 165) the question was unaffected by usage or otherwise, and the court consistently held that the veto power was a legislative function, and the Governor could not exercise it after the Legislature adjourned. Thus the authorities are conflicting, and they naturally will be until the clause which the State Constitutions have so closely followed has been judicially interpreted by the Supreme Court.

In giving to the President the power to veto, it was intended that every bill should be subjected to his deliberate consideration. That purpose is now defeated as there are so many bills presented to him during the last few days of a session. The evil has long been the subject of comment, and any safe relief will be welcome.

If the usage of a century can be shown to be ill-founded and the more reasonable and broader view of Judge Nott should be followed by the Supreme Court, to which it is understood the principal case is appealed, it will insure more careful legislation and promote the dignity and independence of the Executive.

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## RECENT CASES.

AGENCY — CONTRACT UNDER SEAL — VALIDITY AS A SIMPLE CONTRACT. — A member of a partnership having no authority to contract for the firm under seal, mortgaged certain personal property of the firm and deeded it to mortgagee under seal, the seal being entirely unnecessary. *Held*, that though the instrument was invalid as a deed, it was operative as a simple contract. *McNeal Pipe and Foundry Co. v. Woltman*, 19 S. E. Rep. 109 (N. C.).

The authorities are in conflict upon this point. The doctrine of the case is law in New York and Pennsylvania. *Worrall v. Munn*, 5 N. Y. 229; *Alcorn's Executor v. Cook*, 101 Pa. St. 209. The contrary view is taken in Georgia and Maine. *Pollard and Co. v. Gibbs*, 55 Ga. 45; *Wheeler v. Nevins*, 34 Me. 54. It is submitted that the view taken in the principal case is the correct one. A seal has little of its former solemnity, and it seems more sound to reject it as surplusage where it is not essential to the validity of the instrument, but will render it void if not rejected. Its solemnity seems to be the only ground advanced for retaining it.

AGENCY — VICE-PRINCIPAL — FELLOW-SERVANT. — *Held*, that an engineer of a city steam-roller, who has a flagman under his orders and dischargeable by him, in carelessly starting the roller without warning, is the flagman's fellow-servant, not his vice-principal. *Hanna v. Granger*, 28 Atl. Rep. 659 (R. I.).

For comment on this case see 8 HARVARD LAW REVIEW, 57.

ASSIGNMENT FOR BENEFIT OF CREDITORS — RELEASE — EFFECT. — A general assignment by insolvent debtors provided for payment in full of such creditors as should accept its terms and execute releases within sixty days of its date, and for distribution of the balance of the assets among the other creditors. Plaintiff, a creditor, under the impression that he had complied with the requirements, executed a release under seal. Subsequently, upon a contest by the creditors, it was adjudged that he had in fact not complied with the requirements of the assignments. *Held*, that the release was none the less effectual to defeat his right of action on the original debt even though it was expressed to be executed in consideration of his having priority over the general creditors. *Clafin Co. v. Dacus*, 59 Fed. Rep. 998.

This is a hard case, but in a court of law no other result could have been reached. The release being under seal, the question of consideration becomes immaterial, and, no fraud being suggested, the debt is discharged absolutely. Possibly the plaintiff might be relieved in equity.

**CARRIERS — UNREASONABLE STIPULATION IN BILL OF LADING.** — *Held*, that a stipulation in a bill of lading requiring a written claim for loss or damage to be made within thirty days after the loss or damage occurs, covering a transit which may not unreasonably consume thirty days, is void for unreasonableness. *Central Vermont R. R. Co. v. Soper*, 59 Fed. Rep. 879 (Mass.).

It is well-settled law that a carrier may limit his liability by stipulating that notice of loss shall be given within a reasonable time. *Express Co. v. Caldwell*, 21 Wall. 264. In *Southern Express Co. v. Caperton*, 44 Ala. 101, it was held that thirty days from the date of the bill of lading was not a reasonable time, while a contrary decision on similar facts was reached in *United States Express Co. v. Harris*, 51 Ind. 127. Whether this time would ordinarily be considered reasonable or not, the decision in the principal case seems perfectly sound.

**CONSTITUTIONAL LAW — LEGISLATIVE POWERS — REFERENDUM.** — *Held*, that it was unconstitutional to provide that an act granting suffrage to women should take effect on approval of the voters either throughout the Commonwealth or in cities and towns; also that such an act cannot constitutionally provide that it shall take effect throughout the Commonwealth on acceptance of a majority of the voters, including women specially authorized to vote on this question alone. *In Re Municipal Suffrage to Women*, 36 N. E. Rep. 488 (Mass.).

For a discussion of this decision see 7 HARVARD LAW REVIEW, 485, and 8 HARVARD LAW REVIEW, 53.

**CONSTITUTIONAL LAW — RIGHT TO TRIAL BY JURY — STATUTORY PRESUMPTION.** — Missouri statute made it criminal for an officer of a bank to receive a deposit, knowing at the time that the bank was insolvent, and further provided that the failure of such bank should be "*prima facie* evidence" of knowledge on the part of such officer that the bank was insolvent when the deposit was received. *Held*, that the statute did not violate the Missouri Constitution which provided that "the right to trial by jury, as heretofore enjoyed, shall remain inviolate." *State v. Buck*, 25 S. W. Rep. 573 (Mo.).

The court follow *People v. Cannon*, 139 N. Y. 32, and bring out the fact, though not so clearly as is done by the New York court, that these statutory presumptions are not absolutely binding upon the jury, who are still at liberty to acquit, if they find the guilt is not proved beyond a reasonable doubt. See note on *People v. Cannon*, 7 HARVARD LAW REVIEW, 309.

**CONSTITUTIONAL LAW — STATE SENATE NOT A CONTINUOUS BODY.** — The constitution of New Jersey provides (1) that members of the state senate and assembly shall be elected yearly, and that the two houses shall meet separately on a certain day after the election, when the legislative year shall commence; (2) that the senate shall be composed of one senator from each county, elected by the voters of the county for three years; (3) that the senators shall be divided into three classes, so that one year the terms of the members of one class shall expire, and their successors be elected, and so on successively with each of the three classes. It was also provided by statute that in the organization of the two legislative bodies, certified copies of determination of elections shall be taken to be *prima facie* evidence of the right of persons therein mentioned to seats in the house. *Held*, that the senate was not a continuous body, so that a newly elected member could not enter it until his title had been passed on by the old members, but that it expired annually, and all members took part in its organization. *Atty. General ex rel. Weris, Governor, v. Rogers et al.* 28 Atl. Rep. 726 (N. J.).

The distinction drawn by Beasley, C. J., between the senate of the United States and the senate of New Jersey would seem to be a sound one. It proceeds on the ground that Art. 1. sect. 3, cl. 2 of the Constitution of the United States merely imparts to the Federal senate the potentiality of permanent existence; while it is to such provisions as that contained in Art. 1. sect. 3, cl. 4, giving to the senate an always existent presiding officer, that one must have recourse to prove the permanency of that body. The New Jersey Constitution has adopted the former, but not the latter, of these two clauses.

**CONTRACTS — ANTICIPATORY BREACH.** — Defendant contracted with plaintiff to secure to her by his will a life estate in certain lands. He aliened the lands. *Held*, that she could recover the present value of that estate. *Synge v. Synge* [1894], 1 Q. B. 467 (Eng.). See Notes.

**CONTRACTS — INTERFERENCE WITH.** — An action lies for persuasion, by defendant, inducing third persons to break contracts with plaintiff. It is not an action for slander

(which would be barred in two years by the statute) but for the malicious use of the words to the plaintiff's injury. *Van Horn v. Van Horn*, 28 Atl. Rep. 669 (N. J.) See Notes.

**CRIMINAL LAW — LARCENY — POSSESSION.** — A horse was borrowed to drive to church and while there was taken. *Held*, by the Court of Criminal Appeals of Texas, under statutes clearly declaratory of the common law, that such gratuitous bailee does not get possession, and consequently it is not necessary, to warrant a conviction, to show that the taking was without his consent. *Emerson v. State*, 25 S. W. Rep. 289 (Tex.).

It is submitted that such a bailee does get the actual control, care, and management necessary for possession. Such a decision as this would lead to most unsatisfactory results. The court was probably confused by the fact that the bailor is allowed to bring a possessory action, but such action would be for the wrong done to the bailee's possession. Story on Bailments, § 280.

**EVIDENCE — CONTRACT IN WRITING — COLLATERAL ORAL AGREEMENT.** — The defendant, a resident of Georgia, constituted X his attorney to make an exchange of lands of the defendant, situate in New York, for lands of the plaintiff lying in Georgia. The power of attorney contained "a full power of substitution and revocation." X and the plaintiff met and concluded a contract of exchange in writing, the deeds to be delivered at a certain time; and X stipulated orally that one Y should thereafter act for the defendant, and that plaintiff's performance should be made to him. At the time set plaintiff tendered her deeds to Y who made no objection to the manner of their execution, but requested plaintiff to wait and keep the matter open until the defendant's deeds should be forwarded. Subsequently the defendant, being anxious to avoid the contract, sought to impeach it on the ground that the deeds offered by the plaintiff were not executed according to the requirements of Georgia law, and moreover disputed the validity of the appointment of Y as his agent, and the agreement as to the place of performance of the plaintiff. *Held*, that the delegation of authority of X to Y was competent under the power of attorney, and that the oral agreement by which the substitution was made, and place of performance fixed, did not "contravene the terms of the written instrument." *Grillenberger v. Spencer*, 27 N. Y. Sup. 864.

The decision seems based on liberal and just conceptions of the equities of the case. According to a rigid doctrine, perhaps, the collateral oral agreement would be inadmissible on the ground that, the written instrument appearing complete, there was an irrebuttable presumption that it did contain all the negotiations of the parties on the subject (see the typical case of *Naumberg v. Young*, 44 N. J. 331). Such a summary rule, however, has been previously discountenanced in New York, as is seen by cases cited in the report, and also *Chapin v. Dobson*, 78 N. Y. 74, and, fairly considered, the oral agreement seems to be in no way inconsistent with either the spirit or language of the written contract.

**MORTGAGES — REDEMPTION.** — *Held*, that after foreclosure of a senior mortgage, and sale and conveyance under such foreclosure, a junior mortgagee, although he has not been a party to this foreclosure, cannot himself foreclose without first redeeming from the sale. *Rose v. James*, 36 N. E. Rep. 555 (Ill.).

The decision seems thoroughly sound. The court points out that the junior mortgage was only a claim upon the mortgagor's right of redemption. His right to foreclose was a right to have the mortgagor's right of redemption sold, but after this right of the mortgagor has been wiped out by the foreclosure proceeding, he could have no further right of foreclosing. However, he also had a right to redeem from the senior mortgagor, and this right could not be affected by a proceeding to which he was not a party, so that he might still redeem.

**NONSUIT — RIGHT TO — DISCRETION OF COURT.** — After a trial has begun the plaintiff has no absolute right to take a nonsuit, and the same lies in the liberal discretion of the court, but will be denied if the plaintiff has got in all his evidence and is not surprised by the defendant's evidence. The decision is based on the injustice of allowing the plaintiff to put the case beyond the power of the court, when it is in a position to decide it on the merits. *Johnson v. Bailey*, 59 Fed. Rep. 670 (Circuit Court, w. D. Wis.). The decision is avowedly contrary to the rule of common law, but is in accord with the decisions in several States.

**PERSONAL PROPERTY — ATTACHMENT — INFORMATION BY TELEPHONE.** — The attaching creditor being absent from the State, his attorney made the necessary affidavit, on information received from the creditor by a long-distance telephone. *Held*, that such information was sufficiently reliable, that received by telegraph being decided so, and that the attachment was rightly granted on the affidavit based thereon. *Murphy v. Jack*, 27 N. Y. Sup. 802.

Van Brunt, P. J., dissents. His opinion, however, fails to meet the case. The question is only as to the reliability of information received by the attorney; and certainly this is greater in the case of the telephone than in that of the telegraph. The existence of an original dispatch cannot affect the "information and belief" of the attorney who is to take immediate action upon the communication he receives. The decision of the majority seems sound.

**PERSONAL PROPERTY — CONSTRUCTION OF MARRIAGE SETTLEMENT.** — By a marriage settlement, property was assigned to trustees to hold for the wife during her life, and at her death, unless she should otherwise appoint, for such persons as would have been entitled thereto under the statutes for the distribution of intestate's estates if she had died intestate "without having been married." The wife had issue by the marriage and died without having executed her power of appointment. *Held*, on the authority of *Wilson v. Atkinson*, decided in the Court of Appeal in 1864 and reported 4 D. J. & S. 455, that the clause "without having been married," as used in the instrument of settlement, did not shut out the children of the marriage, and that the funds were held by the trustees for them. *Stoddart v. Saville*, L. R. [1894] Ch. Div. 480.

The obvious intention of the parties to the settlement was to exclude the husband only. This the court has accomplished by the above decision. Whether or not the terms of the instrument as expressed were susceptible of the interpretation here given them depends upon the decision of a very difficult question of construction upon which the court did not enter, since it considered itself bound to adopt the meaning of the phrase "without having been married" attributed to it in *Wilson v. Atkinson* by the Court of Appeal. It is submitted, however, that the court was not bound by that decision; that *Wilson v. Atkinson* was decided on peculiar facts, very different from those surrounding the case at bar; and that no general rule of construction was there laid down. See *Emmins v. Bradford*, L. R. 13 Ch. Div. 413.

**QUASI CONTRACTS — CLAIM AGAINST ESTATE — SERVICES RENDERED.** — The plaintiff's insane sister was brought by her guardian to live with the plaintiff, who gave up her former employment and took charge of her sister, the guardian paying the board of both until the latter's death. The plaintiff put in a claim for services, against her sister's estate. *Held*, the plaintiff can recover in the absence of any express agreement if the circumstances show that compensation was expected. *Fuller v. Mowry*, 28 Atl. Rep. 606 (R. I.). This case is clearly within the authorities in America.

**REAL PROPERTY — BREACH OF COVENANT OF WARRANTY.** — Plaintiff conveyed land to the defendant by warranty deed, and, in consideration thereof, took his note and a mortgage of the premises. *Held*, in an action brought on the note and for the foreclosure of the mortgage, that the breach of the warranty was no defence so long as the defendant retained possession of the land and of the deed of conveyance. *Black v. Thompson*, 36 N. E. Rep. 643 (Ind.).

The above decision is undoubtedly in accordance with the law. The defendant could set up a counter claim for all damages resulting from the breach of the warranty, but had no general defence against an action for the purchase money for the land. After the delivery of the title-deed the purchaser's only right to relief from defects, either at law or in equity, depends, in the absence of fraud, solely upon the covenants which he has made. Rawle on Covenants (3d edition) p. 612.

**REAL PROPERTY — PROFIT — TO DIG GRAVEL.** — By reservation in a deed from the common grantor, the plaintiff was entitled to take gravel from the defendant's land, and for several years had taken it from a certain gravel pit. *Held*, that the defendant had no right to prevent taking from this pit, though there were other places from which gravel might be taken with less damage to defendant's land. *Corliss v. Dunning*, 35 Pac. Rep. 1074 (Wash.).

There is a suggestion by the court that if a specific place, equally convenient for the plaintiff, had been pointed out by the defendant, the case would have been different. But even subject to this limitation the decision is too broad. The plaintiff should be required to exercise his right in such place as least to injure the defendant, if it be reasonably convenient though not equally so.

**REAL PROPERTY — CONSTRUCTION OF WILL — EXTRINSIC EVIDENCE.** — Testator left residue to "my niece E. W." *Held*, that the court could inform itself by extrinsic evidence that testator had no niece E. W., and that his wife had a legitimate grand-niece E. W. But an object for the testator's bounty having been thus procured, the court refused to receive evidence of surrounding circumstances tending to show that the wife's illegitimate grand-niece, also named E. W., who had lived with him and taken care of him, was the person meant. *Re Fish, Ingham v. Rayner*. In the Court of Appeal (Lindley, Kay, A. L. Smith) 38 Sol. L. J. 307. See Notes.

**REAL PROPERTY—CONVEYANCE OF A WAY.**—A piece of land was laid out, and a lot sold to X fronting on one of the plotted streets; and the question now is whether the grantor's heirs or the grantees are entitled to the compensation, paid by the city in condemnation proceedings for one-half the "street." *Held*, the grantee is entitled; the street laid out, though not opened, is a street as to the grantee, and the same reasons exist for having the title pass to the centre as in the case of a highway, even though the lines of the plot are along the edge of the way. *Anthony v. Providence*, 28 Atl. Rep. 766 (R. I.).

The case is a sound one and contains a good discussion of the principles on which this rests, yet it seems odd that the court does not recognize the fact that the opposite view is taken as this question was up for the first time in R. I. In accord with principal case see *Bissell v. R. R.*, 23 N. Y. 61; *Fisher v. Smith*, 9 Gray, 441 (Mass.). *Contra*, *Leigh v. Jack*, L. R. 5 Ex. Div. 264; *Bangor House v. Brown*, 33 Me. 309.

**PROPERTY—LAND BUILT UPON BY A RAILROAD COMPANY—EJECTMENT BY OWNER.**—Defendant company, without any right, entered upon plaintiff's land and erected a depot thereon. After having allowed the company to occupy the land for five years, plaintiff now brings ejectment. *Held*, that plaintiff's remedy is confined to damages, the possession of the land not being recoverable on grounds of public policy. *L., N. A., and C. R. R. Co. v. Berkeley*, 36 N. E. Rep. 642 (Ind.).

There seems to be no necessity of putting this case on grounds of public policy, for the same decision could be reached by holding that plaintiff had given defendant a license, which he is estopped from revoking after valuable improvements made under it. If the view taken in this case is followed out, it would seem that plaintiff could not maintain ejectment irrespective of his knowledge of or acquiescence in the use of his land. The cases hardly go that length. Wood on Railroads (Minor's ed., 1894), 927.

**REAL PROPERTY—WILLS—RULE AGAINST PERPETUITIES.**—In this case the testator, after reciting the misdeeds of his son, devises property to trustees to be paid to the unborn children of such son, at age of twenty-four in the case of males, and to the female children upon marriage, with an alternative devise in case his son died without issue, which in fact happened. The Circuit Court of West Va. held the whole was void for perpetuity. *Held*, that the decree should be reversed on the ground that the son having in fact died without issue, the alternative devise should take effect without regard to the fact that the other limitation which failed could have been impeached for remoteness. *Perkins et al. v. Fisher et al.*, 59 Fed. Rep. 801 (W. Va.).

The decision is undoubtedly correct, and shows a clear knowledge of the rather arbitrary and refined rules of law on the subject. It is a general proposition that a limitation which in itself may prove too remote, is void *ab initio*, but this is held not to vitiate another limitation dependent on an alternative contingency which must happen, if at all, within the bounds of remoteness. The language of the court in the case of *Jackson v. Phillips*, 14 Allen, 572, cited in the report, brings out the point with much clearness.

**TORTS—DANGEROUS PREMISES—TRESPASSER.**—A constable entered the defendant's building to serve a civil writ against a person whom he supposed to be therein, but who in fact was not there, and fell down a dark stairway. *Held*, that he is a mere trespasser and cannot recover for his injuries. *Blatt v. McBarron*, 36 N. E. Rep. 468 (Mass.).

The case of an officer with a warrant for arrest is distinguished, and the distinction is a valid one. The public has a direct interest in the immediate apprehension of criminals, while in a civil action the parties alone are interested, and the officer acts rather as an agent of the complaining party.

**TORTS—DECEIT—MISREPRESENTATION OF VALUE.**—Defendant fraudulently altered a written statement of a third party as to the value of certain property. Plaintiff, who resided at some distance from the property, entered into a contract of sale, relying on this statement. *Held*, the contract will be set aside. *McKnight v. Thompson*, 58 N. W. Rep. 453 (Neb.).

The decision is clearly correct. The false representation was concerning the opinion of a third party; plaintiff acted relying solely on the altered statement; and the alteration was designed to prevent him from examining the property.

**TORTS—IMPUTED NEGLIGENCE.**—*Held*, that the negligence of the driver of a private conveyance is imputable to one who is voluntarily driving with him, so as to defeat an action against a third party, whose negligence, together with that of the driver, caused the injuries for which damages are sought. *Whittaker v. City of Helena*, 35 Pac. Rep. 904 (Mont.).

The decision in this case is rested principally on *Prideaux v. Mineral Point*, 43 Wis. 513, where it is laid down that the driver in a case like this is the agent of the one

voluntarily accompanying him. This, if true, would make the person voluntarily accompanying the driver responsible for the driver's negligence to third parties, as has been pointed out in the case of public conveyances in *The Bernina* [1887], L. R. 12 Prob. Div. 58. But such a result was probably not intended by the court. It would seem better, in a jurisdiction where this matter comes up for the first time, to adopt the rule that only actual contributory negligence can defeat an action like the present.

**TORTS — CONVERSION.** — The plaintiff held a chattel mortgage on sheep belonging to X. The defendant "instigated" X to sell the sheep; which was done, and the defendant collected the money. *Held*, that the defendant was liable for conversion of the sheep. *Cone v. Ivinson*, 35 Pac. Rep. 933 (Wy.).

The case seems to be a rather startling one. The line of reasoning adopted by the court was to the effect that by the mortgage plaintiff became the conditional owner of the sheep, and that when the defendant successfully instigated X to sell he was guilty of conversion to his own use. The citations on the point are the well known rules of criminal law to the effect that the procurer of a crime is liable as principal, also *Henderson v. Foy*, 11 So. Rep. 441 (Ala.), in support of the proposition that an analogous rule prevails in regard to civil wrongs. No express attempt is made to show that X acted as agent of the defendant, nor does it appear that the defendant ever had the sheep in his possession. Conaway, J., dissented and held that the proper remedy against the defendant would be to hold him liable as constructive trustee for the plaintiff for money received. It is submitted that the latter view is more in accordance with established usage. The majority of the court show great breadth and lenity in interpreting the pleadings in the case, on the ground that the statutes of the State have given them this power.

**TRUSTS — TRUST FOR MAINTENANCE AND SUPPORT — RIGHTS OF CREDITORS.** — A devise to an executor in trust directed him to expend one half the net income "for the benefit of my son Cassius and his family" or in the executor's discretion to pay any part thereof to Cassius in cash. The children of the family to be educated and maintained "on a scale comporting with their condition and rank in life;" and if, in the executor's judgment, the entire half of such income could not be thus expended judiciously, the surplus to be held in trust so that it might be applied, as the executor might deem best, for the benefit of "Cassius and his family." *Held*, that this was a gift for the mere maintenance and support of Cassius and his family collectively, and Cassius had no separable interest in such income which could be subjected by his creditors. *Brooks et al. v. Reynolds*, 59 Fed. Rep. 923 (Ohio).

This decision reverses the judgment given in this case by Jackson, J., in the Circuit Court (*Reynolds v. Hanna*, 55 Fed. Rep. 783). The difference of opinion is founded more upon the construction of the will than upon the law applicable to cases of spendthrift trusts. In the principal case the conclusion reached is that "the dominating purpose of the testator in founding this trust was to provide for the support and maintenance of Cassius and his family collectively." The two important points would seem to be that the income was not to be paid into the hands of Cassius save in the absolute discretion of the trustee, but was to be expended by the trustee; and again that it lay within the power of the trustee to expend only a part of the income at his discretion. By the construction given the will in the court below it was brought within the extreme English doctrine as to bequests for the maintenance and support of more than one cestui que trust. *Page v. Way*, 3 Beav. 20; *Kearsley v. Woodcock*, 3 Hare, 185; *Wallace v. Anderson*, 16 Beav. 533; *Lewin on Trusts*, 7th ed. 91. But see *Bell v. Watkins*, 82 Ala. 512; *Tolland Co. v. Underwood*, 50 Conn. 493. Assuming that the court were correct in their construction of the will in the principal case it would seem that the decision is in accordance with the weight of authority both in England and in this country. *Twopenny v. Payton*, 10 Sim. 487; *Codden v. Crowhurst*, id. 642; *Holmes v. Penny*, 3 Kay & J. 90; *Slattery v. Wason*, 151 Mass. 266; *Jourolomon v. Massengill*, 86 Tenn. 88; *State v. Hicks*, 92 Mo. 439. For an exhaustive and admirable discussion of this subject see Gray, *Restraints on Alienation*, §§ 134-277 a.